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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 6046/2019**

SH. SANJAY KAUSHIK

..... Petitioner

Through: Mr. Shankar Raju, Mr. Nilansh Gaur
and Ms. Himantika Saini Gaur,
Advocates.

versus

UNION OF INDIA AND ANR.

..... Respondent

Through: Mr. Subhash Gosai, Adv. with Mr.
Amit Kumar Dogra, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

28.05.2019

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CM APPL. 26098/2019

Exemption allowed, subject to all just exceptions. The application stands disposed of.

W.P.(C) 6046/2019

Issue notice. Learned counsel for the respondents accepts notice.

The petitioner assails the order dated 25.04.2019 passed by Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No. 4219/2015. The Tribunal has rejected the said Original Application

preferred by the petitioner wherein he had sought a direction to the respondents to allow his request for withdrawal of his voluntarily retirement and relaxation in terms of the Rule 88 of the CCS (Pension) Rules and allow him to join his duties by deciding the interregnum period as leave of the kind due with continuity of service for retiral benefits.

The petitioner, on promotion, to the entry grade of NCT of Delhi, Andaman & Nicobar Islands, Lakshadweep, Daman & Diu and Dadra & Nagar Haveli Civil Service (DANICS) was posted to Andaman & Nicobar Islands vide order dated 03.06.2011. While serving at Andaman & Nicobar Islands, it appears from the record, on account of his family circumstances, he was depressed and his superior recommended his case being posted back at Delhi. The said communication dated 20.12.2012 of the Chief Secretary, Andaman & Nicobar Administration also recorded that out of his suffering, he was even willing to take voluntary retirement.

The petitioner then made an application to seek voluntary retirement vide his letter dated 12.12.2012, seeking to retire on 13.03.2013. He also made a request that he may be transferred to Delhi so that his service record could be completed and he could draw his pension from Delhi. He undertook that he would not withdraw his voluntary retirement and he also subsequently stated that he may not necessarily retire from 13.03.2013 and he may be allowed to continue in service till his voluntary retirement application is accepted. Consequently, the respondent accepted the petitioner's application for voluntary retirement w.e.f. 18.03.2013 and the petitioner severed his relationship with the respondent on the said date. On 01.04.2013, the petitioner sought to withdraw his voluntary retirement. He invoked Rule 88 of the CCS (Pension) Rules, 1972, which is the power of

relaxation in respect of the rules and the Government can exercise the power of relaxation, if it is satisfied that the operation of any of these rules causes undue hardship in any particular case. The petitioner, accordingly, sought relaxation of Rule 48-A (4) of the CCS (Pension) Rules, which provides that a government servant, who has elected to retire under the said Rule and has given the necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority. The request for withdrawal has to be made before the intended date of retirement.

Mr. Raju submits that the petitioner is not raising a challenge to the acceptance of his request for voluntary retirement with effect from 18.03.2013. His only submission is that looking to the circumstances and the fact that in several other cases the government has exercised power of relaxation contained in the Rule of the CCS (Pension) Rules, his case may be appropriately considered. Mr. Raju submits that while passing the reasoned order, which is reproduced in the impugned order itself, whereby the petitioner's representation had been rejected, the respondent have not considered all the relevant aspects, namely, the petitioners family circumstances in which he rendered his application for voluntary retirement and his mental state, which finds reflection in the communication dated 20.12.2012 of the Chief Secretary, Andaman & Nicobar Administration.

Mr. Raju, on instructions from the petitioner, also states and undertakes that the petitioner is even agreeable to the period starting 18.03.2013, till the date he is allowed to rejoin his service be treated as *dies non* for all purposes and to the petitioner being posted to any other place including Andaman & Nicobar Islands in case he is reinstated in service.

In these circumstances, we direct the respondents to consider the petitioners case for grant of relaxation under Rule 88 of the CCS (Pension) Rules in relation to Rule 48-A(4) of the said Rules on its own merits while considering the petitioners circumstances; other precedents, and; the undertaking furnished by the petitioner before this court as noticed above. The consideration should take place within the next eight weeks.

Petition stands disposed of in the aforesaid terms.

VIPIN SANGHI, J

RAJNISH BHATNAGAR, J

MAY 28, 2019

kd